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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/737,004 | 12/16/2003 | Michael D. Anderson | 02-711 | 5756 |

719 7590 10/13/2006

CATERPILLAR INC.
100 N.E. ADAMS STREET
PATENT DEPT.
PEORIA, IL 616296490

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| EXAMINER |
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CHIN, GARY

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| ART UNIT | PAPER NUMBER |
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3661

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,004

Applicant(s)

ANDERSON ET AL.

Examiner

Gary Chin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/16/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claims 1 and 10, there is no clear recitation in the body of these claims as to how the actual ground speed and the maximum ground speed are being employed to maintain a constant ground speed of a work machine. Further, in claim 1, line 14, "RPMs" should be "RPM" to be consistent. Moreover, on line 15 of claim 1, "a constant ground speed" should be "said constant ground speed" in order to avoid the antecedent basis problem.

As per claim 6, line 4, "ground speed" should be "the ground speed" to avoid the antecedent basis problem.

As per claim 7, the preamble is directed to a method of maintaining a constant ground speed of a work machine. However, there is no recitation in the body of the claim as to how the ground speed of the work machine is being maintained at a constant level based upon the recited signals. It is suggested to add the following clause at the end of the claim "and modulating engine RPM to the desirable engine RPM to maintain the constant ground speed of the work machine" to rectify the problem.

As per claims 8 and 9, both on line 1, after "wherein", the words "said step of" should be inserted respectively in order to avoid the antecedent basis problem. Further, on line 6 of claim 9, "the lowest RPM value" should be "a lowest RPM value" also to avoid the antecedent basis problem.

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Claims 2-5 are rejected for incorporating the above errors from the parent claim by dependency.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3, 5 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Belcher et al (pub. no. 2005/004736 A1).

As per claims 1, 5 and 10, figure 1 of the Belcher et al reference clearly discloses the claimed method of maintaining a constant ground speed of a work machine having an engine (items F and G), powertrain (item C) and an electronic control module ECM (item D). Sections 0009, 0013 and 0045 of the Belcher et al reference further disclose the use of the ECM to receive the actual ground speed and the maximum ground speed and subsequently applying an algorithm to determine the desirable RPM of the engine to modulate the engine RPM to the desirable engine RPM (or the fuel) to maintain the constant ground speed of the work machine as claimed.

As per claim 3, the additionally claimed step of sensing the transmission output speed to derive the ground speed is clearly shown in item B, figure 1 of the Belcher et al reference.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belcher et al (pub. no. 2005/004736 A1).

As per claims 2 and 4, it is noted that the claimed step of sensing torque converter output speed or sensing axle speed to derive the ground speed has not been explicitly disclosed in the Belcher et al reference. However, it would have been readily apparent for one skilled in the art that there are many commercially available ground speed sensing devices including the ones as claimed can be used to derive the ground speed of a work machine. Such well known sensing devices can be substituted for one another and are merely dictated by the availability and/or economical feasibility of such devices.

7. Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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8. Claims 7-9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
9. The additional references are cited to show the related system(s). Applicant(s) should consider them carefully when responding to the current office action.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Chin whose telephone number is (571) 272-6959. The examiner can normally be reached on Monday-Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


GARY CHIN
PRIMARY EXAMINER